IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 29TH MAY 2007 / 8TH JYAISHTA 1929

Crl.MC.No. 1435 of 2007()

CC.465/2002 of JUDL.MAGISTRATE OF FIRST CLASS, PALA

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PETITIONER: ACCUSED

O.S.PRAKASH,
OLANICKAL HOUSE,
ARUNAPURAM KARA,
PULIYANNOOR VILLAGE,
PALA,KOTTAYAM DISTRICT.

BY ADV. SRI.BIMAL K.NATH
SRI.E.M.SUNIL KUMAR

RESPONDENTS: RESPONDENTS

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1. BOBAN MATHEW,
S/O.LATE M.J.MATHEW,
MANARKAT HOUSE,
KAROOR KARA,LALAM VILLAGE,
PALA.

2. STATE OF KERALA,
REP.BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.S.U.NAZER

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 29/05/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J.

Crl.M.C.No.1435 of 2007

Dated this the 29th day of May 2007

O R D E R

The petitioner is the accused in a prosecution under Section 138 of the Negotiable Instruments Act. Trial had commenced. The complainant had filed a proof affidavit. The complainant was cross-examined. At that stage, the complainant executed a power of attorney in favour of one of his sons and the said son came before the court with a request to permit him to prosecute the complaint. The petitioner raised objections against the course adopted by the complainant giving power of attorney to his son to conduct the case after he was examined in court. The learned Magistrate, by the impugned order (copy of which is produced as Annexure A4) overruled the objection and granted permission to the son of the complainant to prosecute the complaint on his behalf on the strength of the power of attorney. That order is now challenged before me in this Criminal Miscellaneous Case.

2. Admittedly, the complainant has expired thereafter. It is submitted that no other legal heir has come forward to prosecute the petition.

3. The law on the point is very clear. When the complainant is dead, the court is at liberty to permit any fit person to continue to prosecute the complaint. The power of attorney holder herein is none other than the son of the deceased. In these circumstances, if even after the death of the original complainant, his son, who was appointed by the deceased complainant as power of attorney holder to prosecute the complainant is permitted to continue the prosecution, I am unable to find any failure of justice in such course adopted by the learned Magistrate. The learned Magistrate had permitted the power of attorney holder to appear on behalf of the deceased complainant prior to his death evidently on being satisfied about the condition of the deceased complainant. That permission granted does not also in these circumstances, warrant or justify any interference by invoking the jurisdiction under Section 482 Cr.P.C.

4. This Criminal Miscellaneous Case is, in these circumstances, dismissed. The petitioner if so advised can raise the objection that the power of attorney is not the fit person whereupon the learned Magistrate must pass appropriate orders on such objection. With the above observation, this Criminal Miscellaneous Case is dismissed.

(R.BASANT, JUDGE)

jsr

// True Copy// PA to Judge

R.BASANT, J.

CRL.M.CNo.

ORDER

21ST DAY OF MAY2007